IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

OP.No. 2236 of 1998(S)
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AGAINST THE ORDER DATED 28.8.1997 IN RA 190(COCH)/96 IN GTA.57/1990 of INCOME TAX APPELLATE .TRIBUNAL,COCHIN BENCH

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PETITIONER:
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THE COMMISSIONER OF GIFT-TAX,
TRIVANDRUM

BY ADV.SRI.P.K.R.MENON,SR.COUNSEL,GOVT. OF INDIA (TAXES) &
SRI.GEORGE K.GEORGE

RESPONDENT:
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SHRI.JOSEPH KURUVILA,
M/S.PALAI TIMBER TRADERS,
PALAI.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 25/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**H.L.DATTU, C.J. & K.T.SANKARAN, J.**

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**O.P.No.2236 of 1998**

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Dated, this the 25th day of July, 2007

**JUDGMENT**

**H.L.Dattu, C.J.**

This is a petition filed by the Revenue under Section 26(3) of the Gift Tax Act, 1958 ('Act' for short).

(2) The Revenue being aggrieved by the orders passed by the Deputy commissioner of Income Tax (Appeals) Thiruvananthapuram, had filed second appeal before the Income Tax Appellate Tribunal, Cochin Bench, Cochin in G.T.A.No.57 of 1990 for the assessment year 1981-82.

(3) The Tribunal has rejected the Revenue's appeal by its order dated 28th June, 1996.

(4) The Revenue had filed a petition under Section 26(1) of the Act, inter alia, requesting the Tribunal to refer the following question of law for our consideration and decision:

> "Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that no element of gift was involved on the assessee's retirement from the firm in which he was a partner."

(5) The Tribunal has rejected the petition filed by the Revenue. Therefore, the Revenue is before us in this petition filed under Section 26(3) of the Act requesting us to direct the Tribunal to refer the question of law raised by it for our consideration and decision.

(6) The question of law raised by the Revenue in this petition filed under Section 26(3) of the Act is no more debatable in view of the law declared by the apex Court in the case of *Commissioner of Gift Tax* v. *T.M.Louiz* [(2000) 245 ITR 831]. Since the question of law raised by the Revenue has already been

decided by the apex Court, at this stage, we need not to have directed the Tribunal to state the case and refer the question of law for our consideration and decision. Therefore, the petition requires to be rejected and it is rejected.

Ordered accordingly.-

(**H.L.DATTU)**
**CHIEF JUSTICE**

**(K.T.SANKARAN)**
**JUDGE**

vns